

**COPY**

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

Case No. C-1-02-479

JEFFERSON-PILOT LIFE INSURANCE CO., )  
Plaintiff )  
v. )  
CHRISTOPHER L. KEARNEY, )  
Defendant )

DEPOSITION OF: TODD DITMAR, taken before  
Sharon R. Roy, Notary Public Stenographer, pursuant  
to Rule 30 of the Massachusetts Rules of Civil  
Procedure, at the law offices of ACCURATE COURT  
REPORTING, 1500 Main Street, Springfield,  
Massachusetts on May 13, 2004 commencing at 9:29 a.m.

A P P E A R A N C E S:

(See Page 2)

Sharon R. Roy  
Certified Shorthand Reporter  
Registered Professional Reporter

ACCURATE COURT REPORTING (413) 747-1806

09:47:54 1 MR. ELLIS: Objection.

09:47:54 2 Q. (By Mr. Roberts) Go ahead.

09:47:55 3 A. No, he did not.

09:47:56 4 Q. He did not share with you the substance of  
5 any of the testimony?

09:48:00 6 A. No, he did not.

09:48:08 7 Q. Other than Mr. Mills, Mr. Hughes,  
8 Mr. Bonsall, Ms. Beattie, and Mr. Ellis, have you  
9 discussed today's deposition or the Kearney claim  
10 with anyone in the past two weeks?

09:48:20 11 A. Not that I can recall.

09:48:26 12 Q. Did Mr. Ellis share with you that DMS was  
13 determined to be in bad faith in a recent jury  
14 decision in Hamilton County, Ohio?

09:48:36 15 MR. ELLIS: Objection. And you  
16 don't have to answer that, that's privileged.

09:48:39 17 Q. (By Mr. Roberts) Are you mindful, sir,  
18 from any source that there was a jury determination  
19 in Hamilton County, Ohio last month that DMS was in  
20 bad faith in its handling of a disability claim?

09:48:49 21 MR. ELLIS: I also object that that  
22 misstates the fact. There is no jury finding  
23 of bad faith in Ohio other than during a  
24 summary jury trial which was conducted in a

1 right-hand column three or four lines down?

11:00:32 2 A. Yes.

11:00:41 3 Q. Have you ever seen anywhere a list of  
4 actions performed on the Kearney claim?

11:00:46 5 A. No, I have not.

11:00:50 6 Q. Was there ever a written strategy prepared  
7 on the Kearney claim?

11:00:55 8 A. I do not believe so.

11:00:56 9 Q. Is it the policy of DMS to develop  
10 strategies for each claim?

11:01:01 11 A. No.

11:01:12 12 Q. Do you require the persons that work  
13 underneath you to have a certain planned approach to  
14 their administration of a claim?

11:01:29 15 A. No.

11:01:30 16 MR. ROBERTS: Let's go off the  
17 record for a second.

11:01:31 18 THE VIDEOGRAPHER: Going off the  
19 record at 11 a.m.

11:12:57 20 (A recess was taken)

11:12:57 21 (Exhibit 30, marked)

11:12:58 22 THE VIDEOGRAPHER: Back on record at  
23 11:12 a.m.

11:13:09 24 Q. (By Mr. Roberts) Mr. Ditmar, I've marked

1 as Exhibit 30 several documents all combined into one  
2 exhibit which we'll call 30. The first two pages of  
3 Exhibit 30 are 2001 Yearly Performance Plan and  
4 Review of Lance Faniel, which is Bates labeled DMS  
5 018 and DMS 019.

11:13:35 6 MR. ELLIS: Do you have copies of  
7 these for me, Counsel?

11:13:38 8 Q. (By Mr. Roberts) The next three pages are  
9 2002 Yearly Performance Plan and Review of John  
10 Midghall marked DMS 047, DMS 048, and DMS 049.

11:13:49 11 The next document is 2001 Yearly  
12 Performance Plan and Review of John Midghall marked  
13 DMS 050 and DMS 051.

11:14:02 14 The next is 2001 Yearly Performance Plan  
15 and Review of Brian Wentworth marked DMS 025 and 026.

11:14:13 16 The next is Yearly Performance Plan and  
17 Review, Brian Wentworth, signed by John Midghall,  
18 labeled DMS 027 and DMS 028.

11:14:29 19 The next is Yearly Performance Plan and  
20 Review of Brian Wentworth marked DMS 029, 030, and  
21 031.

11:14:40 22 The next is John Graff Yearly Performance  
23 Plan and Review marked DMS 060 and DMS 061.

11:14:53 24 The next is marked DMS 077, 78, 79, 80 and

1 break for lunch, please.

11:55:18 2 MR. ROBERTS: Absolutely.

11:55:19 3 THE VIDEOGRAPHER: Going off record  
4 at 11:54 a.m.

01:22:38 5 (A recess was taken)

01:23:06 6 THE VIDEOGRAPHER: Back on record at  
7 1:23 p.m.

01:24:13 8 Q. (By Mr. Roberts) Mr. Ditmar, you are under  
9 oath still. Did you discuss your testimony with  
10 Mr. Ellis during the lunch break?

01:24:18 11 A. No.

01:24:20 12 Q. Do you refer to Mr. Ellis as "Big Brother"?

01:24:23 13 A. No.

01:24:24 14 Q. Have you ever heard that expression?

01:24:27 15 A. Vaguely.

01:24:28 16 Q. Regarding Mr. Ellis?

01:24:31 17 A. No.

01:24:32 18 Q. Do you perform performance evaluations of  
19 your subordinates that work in the Jefferson-Pilot  
20 block of business?

01:24:38 21 A. Yes.

01:24:39 22 Q. For how many years have you performed that  
23 function?

01:24:44 24 A. Since 2000.